

FY 1998-99 BOILERPLATE REPORT
A Summary of Trends Affecting The Use of Prison

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November 1999

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NOTE: Limited numbers of copies of the appendices (which total 118 pages) are available. A copy may be obtained by contacting the House or Senate Fiscal Agency.

EXECUTIVE SUMMARY

Language in a fiscal year (FY)1998-99 appropriations act for the Department of Corrections required the Senate and House Fiscal Agencies to prepare a report on various criminal justice trends affecting the use of prison. Among the trends noted in this report:

- ' The prison population has increased markedly, rising considerably faster than the State population, while total crime rates have declined.
- ' The greatest increases in prison admissions have occurred in the numbers of probation and parole violators being sent to prison.
- ' Recent declines in parole approvals have contributed significantly to the burgeoning prison population.
- ' Felony convictions for assaultive crimes have increased, while those for drug offenses and nonassaultive offenses have declined.
- ' Overall, use of local sanctions (probation and jail) for new felony convictions has increased in recent years, while use of prison has decreased.
- ' Insufficient data are available to accurately assess the impact of legislative sentencing guidelines and truth-in-sentencing has not yet significantly affected the prison population.
- ' Recent changes to felony drunk driving statutes carry the potential to greatly increase the numbers of offenders convicted of third-offense drunk driving.
- ' The recent increase in the felony threshold for larceny offenses could increase the use of local sanctions for affected offenders, decrease the use of felony convictions and move cases to district courts.
- ' Thorough data collection and analysis will be essential to determine the impacts of legislative sentencing guidelines and changes to drunk driving and felony threshold statutes.

CHARGE TO THE AGENCIES

This report is the result of 1998 supplemental appropriations legislation affecting the County Jail Reimbursement Program, or CJRP (for complete text of the relevant language, please see Appendix A). In the legislation, the House and Senate Fiscal Agencies were required to summarize trends that affect the use of prison, and to review historic and recent trends in felony dispositions, prison admissions and population, jail admissions and population, statutory changes that are likely to have a substantial effect on felony sentencing, the impact of State and local policies on prison and jail admissions, and

analyses of felony sentencing by the Department of Corrections (DOC or the Department) or local units of government. This report is prepared for the House and Senate Appropriations Subcommittees on Corrections so that they may use the information to determine the categories of offenders that are to be targeted and reimbursed through programs for reduced admissions to prison, according to statute.

Criminal justice and incarceration trends are based on a wide variety of factors including the characteristics of the general population, public opinion, prosecutorial and judicial attitudes, funding, and criminal behavior, to mention a few. This report attempts to provide some insight into the causes for the trends observed, but the reader should recognize that multiple factors affect the trends, and there are no definitive tests to isolate the causes of a trend. In addition, statewide averages may inadequately describe admission or population trends when performance varies widely among the 83 counties of Michigan.

Extensive changes to sentencing statutes took effect in 1999; these changes included the implementation of legislative sentencing guidelines, revisions in the drunk driving statutes, and an increase in the felony threshold for larceny offenses. These changes may create new trends and render obsolete many of the observations made in this report. Although it is part of the charge to the Fiscal Agencies to review recent as well as historic trends, the data are not currently available to allow independent evaluation and presentation of the trends since January 1999.

PRISON ADMISSIONS AND PRISON POPULATION

The prison population,¹ illustrated in Figure 1, has increased 230% in the past 20 years, rising from 13,330 in December 1979 to 44,191 in July 1999, with the steepest increase occurring during the late 1980s. Over the past five years, while the State's population increased by 3% and the total crime rate decreased 5%, the prison population has risen by about 20%.

Driving the increases is a complex interplay of changing criminal justice trends. Prison population is a function of the number of people entering the prison system and the number of people leaving. Intake into the prison system is divided among new court commitments (people newly convicted and sentenced for crimes), parolees sentenced for new crimes, probation violators (including both offenders who commit new crimes and those sent to prison for technical violations), and escapees returned with a new sentence. Prison intake also includes offenders being returned to prison from community placement (halfway houses or electronic tether) due to technical violations or electronic of parole,

¹The prison population includes prisoners in corrections camps, which are fenced facilities housing low-risk prisoners.

and for a variety of other reasons, such as return from court.² (See [Table 1](#) below for prison intake and return information.)

Figure 1

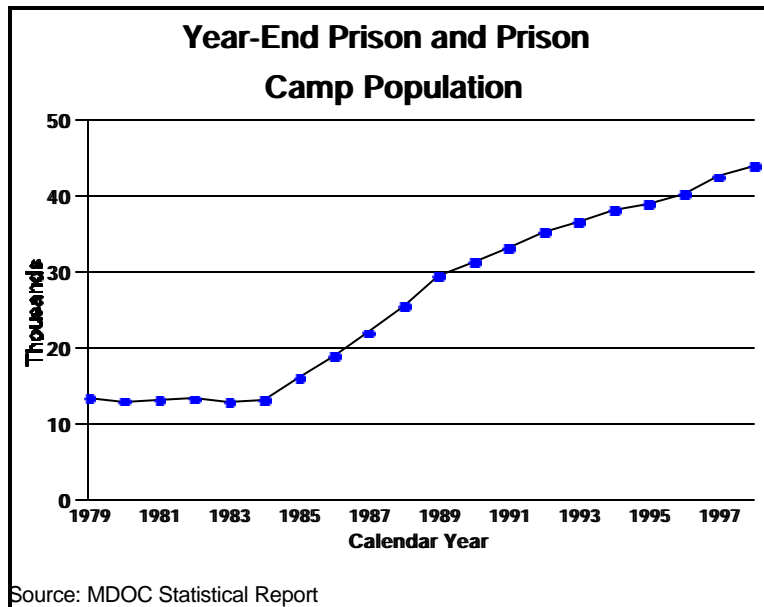


Table 1

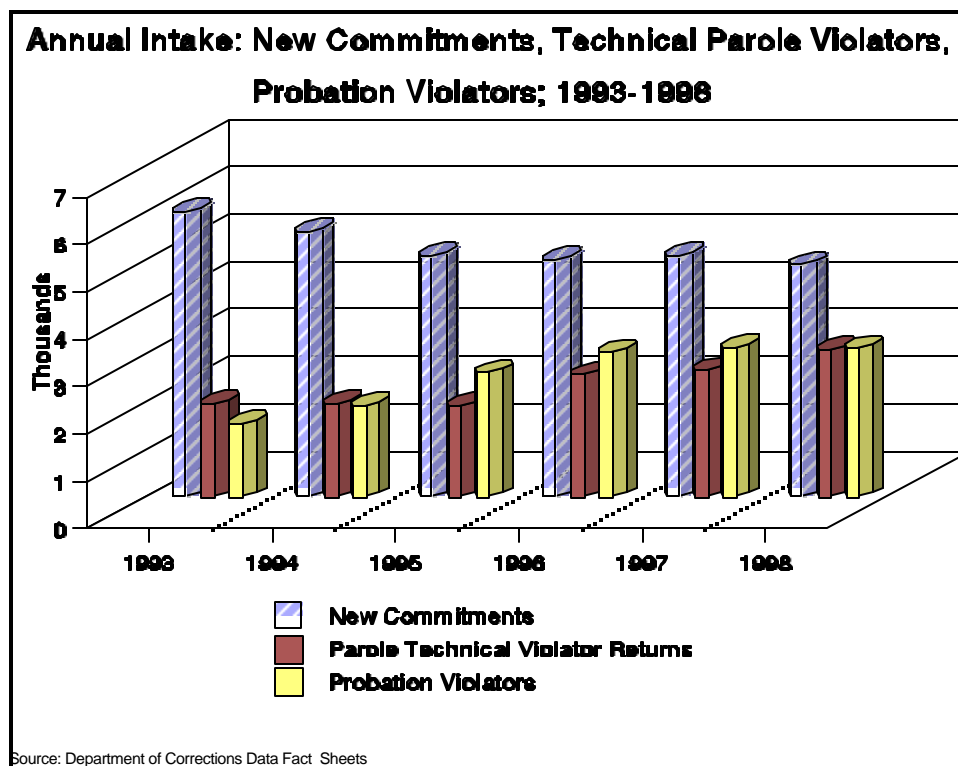
Annual Prison Intake and Returns									
Year	Probation Violators	New Commitments	Parole Violators*	Escapees*	Return from Court*	CRP Return	Technical Parole Violator Returns	Other Returns	Total Intake and Returns
1993	1,553	6,014	1,563	88	1,063	unknown	1,961	unknown	12,242**
1994	1,929	5,593	1,222	85	888	390	1,958	6,239	18,304
1995	2,617	5,077	886	81	873	331	1,921	6,266	18,052
1996	3,046	5,002	1,027	85	878	336	2,578	5,690	18,642
1997	3,148	5,084	1,288	68	1,000	439	2,667	5,639	19,333
1998	3,132	4,894	1,340	54	999	412	3,109	5,568	19,508

* New or additional sentence imposed
** Excluding Community Residential Program Returns and Other Returns

²A prisoner leaves prison to appear in court as a witness or for court proceedings involving charges against the prisoner. The return to prison is recorded as return from court with or without additional sentence.

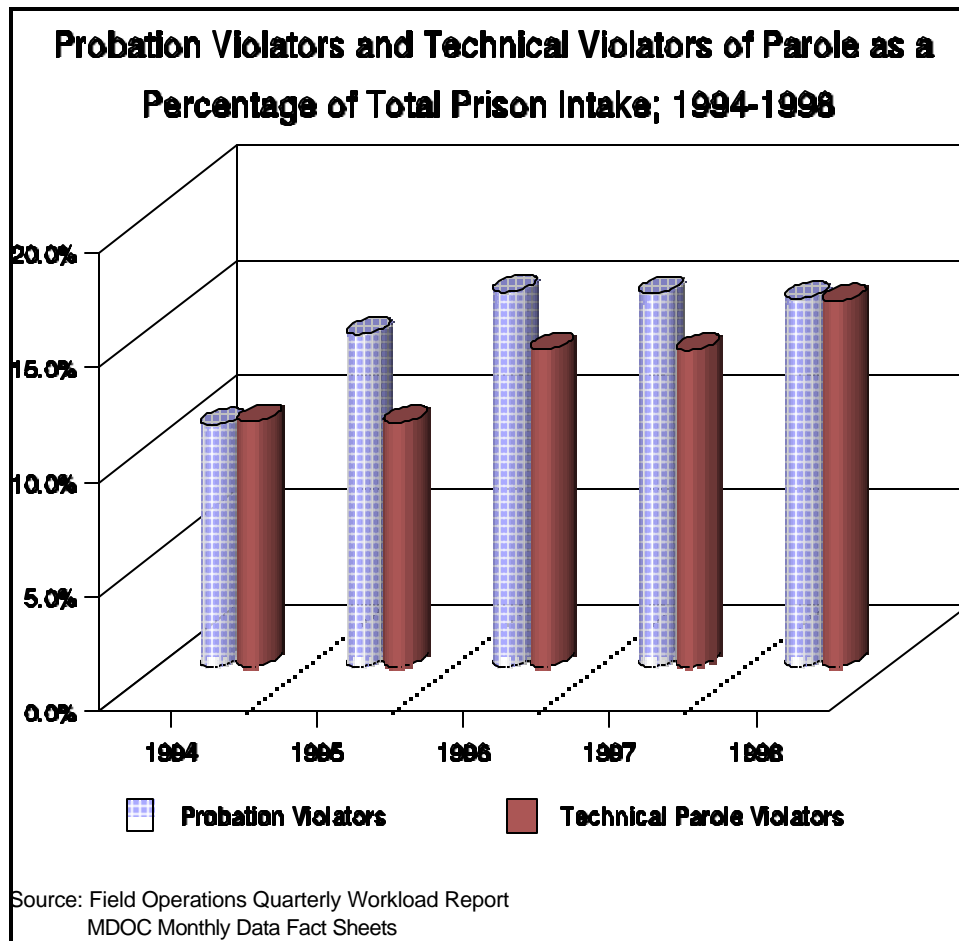
As seen in Figures 2 and 3, annual intake and returns increased by 1,204 or 6.6% from 1993 to 1998. However, the increases are *not* the result of rising numbers of new court commitments. Rather, it is admissions of parole and probation violators that are driving the intake increases. Between 1993 and 1998, annual intake of probation violators rose from 1,553 to 3,132, an increase of 102%. In that time period, annual returns of technical violators of parole rose from 1,961 to 3,109, an increase of 58.5%.³

Figure 2



³The numbers of parolees sentenced to prison for new criminal convictions have fluctuated from 1,563 in 1993 down to 886 in 1995 and back up to 1,340 in 1998. The fluctuation is attributed to the impact of *People v Young*. Prior to *Young*, a parolee's new sentence commenced upon expiration of the *minimum* term for the old offense. In *Young*, a Wayne County trial court interpreted statute to require that the offender serve the *maximum* term on the previous offense before commencing to serve the term on the new offense. This ruling subsequently was overturned by the Supreme Court, thus returning sentence computations to prior practice. The effect of the initial trial court ruling seems to have been to increase the use of alternative means of dealing with parole violators who otherwise might have been sentenced to prison for new criminal convictions; once the Supreme Court issued its ruling, the numbers of parole violators admitted to prison with new sentences began to rise to their former levels.

Figure 3



The other half of the prison population equation is prisoner exits, and these too have experienced changes that are contributing to recent prison population increases. The parole process includes an interview in which parole for the prisoner is considered by the parole board; a grant or denial of parole, in which the parole board decides whether parole is appropriate; and the movement to parole, in which the prisoner actually leaves prison.⁴ As seen in Figures 4 and 5, paroles are down, both as a percentage of total parole interviews, and as a percentage of total prison population. These changes in parole trends have been linked to a reluctance to parole assaultive offenders particularly sex offenders. Over time, declines in parole for assaultive offenders, combined with increased intake of these offenders, should lead to increased proportions of assaultive offenders within the prison population.

⁴The parole board may grant parole to take effect at a later time, and if a prisoner receives a disciplinary ticket in the interim period, parole may be revoked.

Figure 4

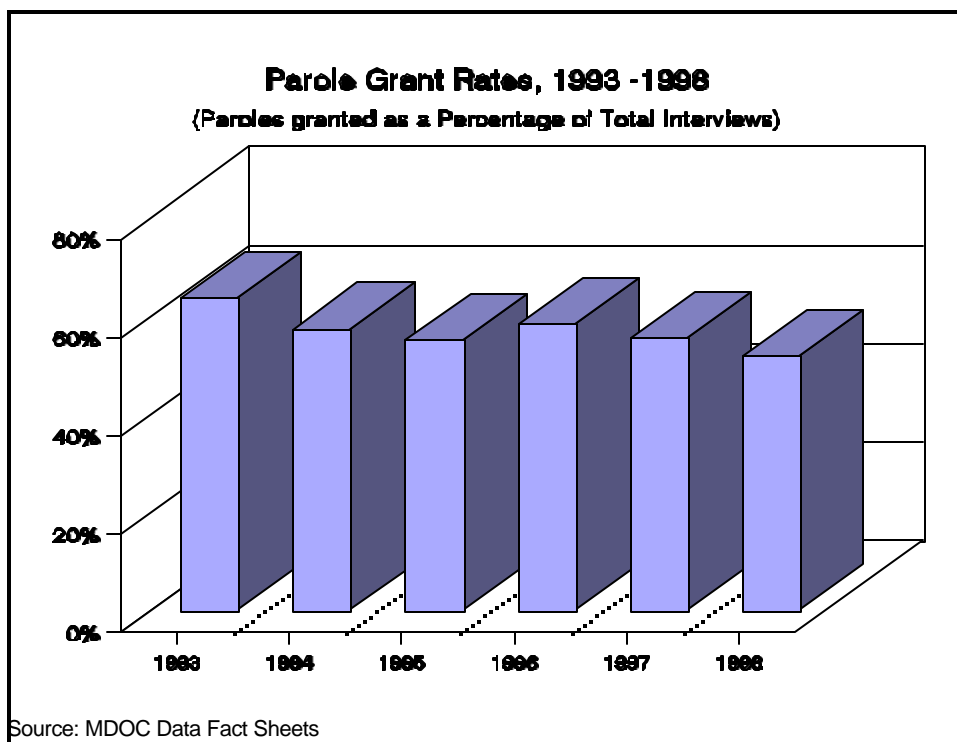
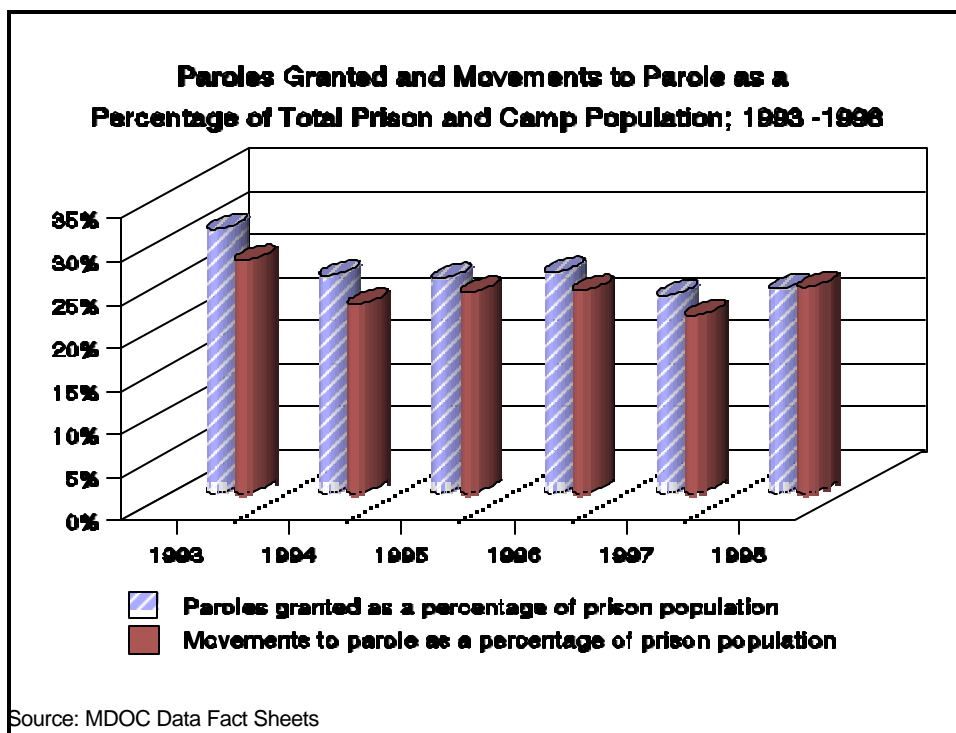
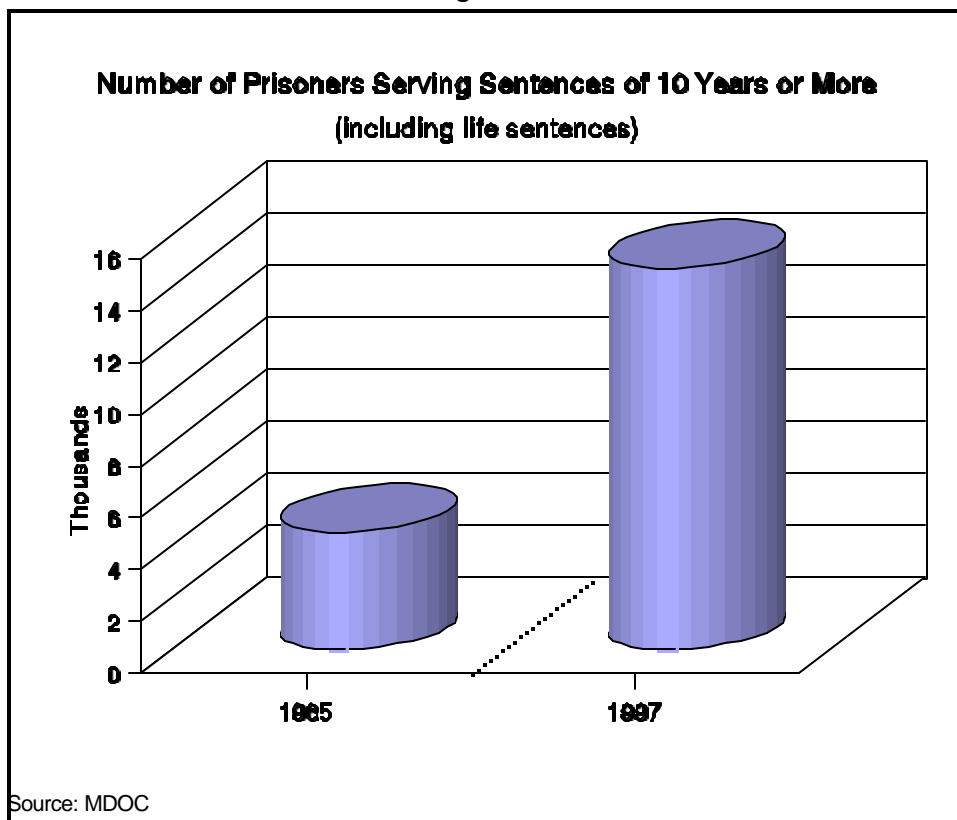


Figure 5



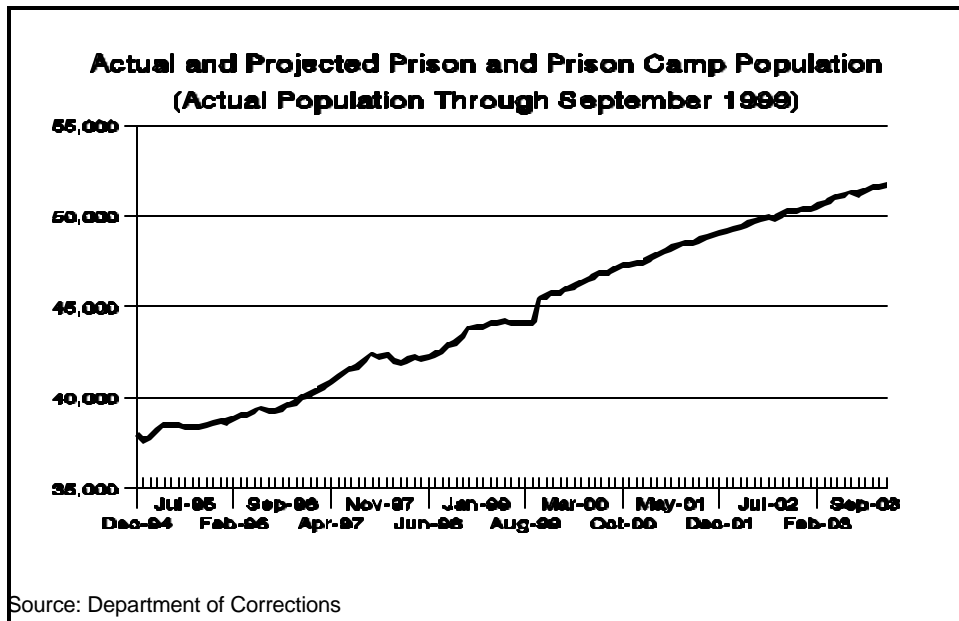
The changing profile of the prison population can be seen in comparisons of the prison population over time. [Figure 6](#) shows the number of offenders serving prison terms with a minimum sentence of 10 years or more. Not only have the relative proportions of nonviolent, violent, and drug offenders coming to prison shifted over the years, but the numbers of prisoners sentenced to terms of 10 years or more have increased.

Figure 6



In its annual prison population projection issued in January 1999, the DOC predicted that the prison population would continue to rise, assuming that recent trends such as the decline in parole also continue. The Department noted, however, that parole trends have been extremely volatile of late. The Department further cautioned against over reliance on the population projection prior to analysis of the impact of newly enacted sentencing guidelines and truth-in-sentencing, which is discussed later in the paper. [Figure 7](#) shows historical prison population together with projected prison population.

Figure 7



JAIL ADMISSIONS AND JAIL POPULATIONS

Trends in jail utilization carry consequences not only for local units of government, but also for the State. If jail beds are filled with misdemeanants, jail sentences for felons become problematic. When local beds are unavailable, offenders who might otherwise have been sentenced to local sanctions may instead be sentenced to prison.

Using county reported data, the Jail Population Information System (JPIS) provides information on changes in jail utilization and the types of offenders (felons versus misdemeanants, or unsentenced versus sentenced) occupying jail beds. In general, since 1991, the proportion of jail beds occupied by sentenced offenders (compared with unsentenced offenders) has increased and the proportion of jail beds occupied by felons (compared with misdemeanants) has increased. The JPIS has advanced to the point where reasonably reliable county-specific data are available for most counties for 1997 and 1998. The system offers a baseline against which to compare changes in jail utilization under recent legislation, including sentencing guidelines, drunk driving revisions, and the increase (to \$1,000) of the threshold for felony larceny.

Recent data suggest that 35% of jail beds are occupied by unsentenced felons. Another 24% are occupied by sentenced felons, while sentenced misdemeanants occupy 17% or 18% of the beds. However, there is considerable variation by county in terms of jail utilization, as can be seen in [Table 2](#). The relative proportions of felons and misdemeanants in jails will merit close observation as the impacts of statutory changes begin to be felt more fully.

Table 2

AVERAGE DAILY JAIL POPULATION (ADP) BY COUNTY**, CALENDER YEAR 1998							
County	Unsentenced Felons	Unsentenced Misdemeanants	Sentenced Felons	Sentenced Misdemeanants	Boarded In	Other	Total ADP
Alcona	0.6	0.6	5.2	3.2	13.4	0.3	23.3
Alger*	3.9	3.3	2.2	3.9	0.0	1.6	14.9
Allegan	41.2	27.9	52.0	29.9	21.1	11.3	183.4
Alpena	4.4	4.5	7.8	17.8	13.3	0.3	48.5
Antrim	2.3	4.2	11.0	17.5	0.0	0.0	35.0
Arenac*	1.3	1.9	1.0	2.5	0.0	22.0	28.7
Baraga	not reported						
Barry*	3.3	19.3	7.1	4.3	0.0	1.1	35.1
Bay	not reported						
Benzie*	7.0	22.3	0.0	0.2	2.6	31.8	63.9
Berrien	27.6	41.0	100.2	113.2	0.0	58.2	340.2
Branch	13.4	19.4	16.1	63.0	4.9	0.2	117
Calhoun	68.1	50.3	127.5	160.0	159.2	3.4	568.5
Cass	21.9	8.7	59.2	24.1	21.3	1.4	136.6
Charlevoix	2.4	3.0	10.7	10.8	1.9	0.2	29.0
Cheboygan	8.1	5.2	10.4	10.9	0.0	0.0	40.0
Chippewa	9.8	10.9	10.0	19.4	0.0	0.0	50.1
Clare	6.8	13.1	8.7	11.0	20.2	5.0	64.8
Clinton	3.4	3.0	26.5	35.9	89.6	0.4	158.8
Crawford*	9.1	4.5	11.9	1.2	13.4	0.7	40.8
Delta	6.7	7.2	12.0	9.7	0.5	0.0	36.1
Dickinson	4.3	3.5	13.7	10.7	0.0	0.1	32.3
Eaton	33.4	13.2	50.1	29.3	63.2	2.8	192.0
Emmet	6.9	8.8	14.5	15.5	0.9	1.4	48.0
Genesee	not reported						
Gladwin	8.6	25.6	13.3	2.9	0.0	15.9	66.3
Gogebic	7.3	4.1	5.8	4.7	0.1	0.4	22.4
Grand Traverse	8.9	6.8	49.6	74.4	5.6	1.4	146.7
Gratiot	2.1	5.0	19.6	32.3	0.0	0.0	59.0
Hillsdale	4.9	6.4	14.4	18.3	4.0	0.0	48.0
Houghton	3.3	3.1	9.6	14.8	2.6	0.0	33.4
Huron	2.4	5.8	10.3	18.5	15.3	0.0	52.3
Ingham	129.1	107.6	114.6	162.3	45.5	12.8	571.9
Ionia	not reported						
Iosco	6.4	4.3	13.0	16.9	0.5	7.3	48.4
Iron	4.3	3.3	6.8	12.2	0.1	0.2	26.9
Isabella	10.9	15.5	20.9	36.4	83.2	0.8	167.7
Jackson	not reported						
Kalamazoo	not reported						
Kalkaska	3.5	3.6	10.7	21.3	1.2	0.1	40.4
Kent	not reported						
Keweenaw*	0.0	0.0	2.0	0.9	0.0	0.2	3.1
Lake	3.1	15.3	0.4	1.6	1.0	0.2	21.6
Lapeer*	8.0	5.5	13.9	17.1	8.1	4.6	57.2
Leelanau	3.0	1.6	4.8	5.0	0.0	0.4	14.8
Lenawee	28.0	11.3	49.3	67.4	13.6	0.6	170.2
* Partial Year Data							
** Data compiled from counties reporting electronically, excluding offenders boarded out.							

AVERAGE DAILY JAIL POPULATION (ADP) BY COUNTY, CALENDER YEAR 1998**

County	Unsented Felons	Unsented Misdemeanants	Sented Felons	Sented Misdemeanants	Boarded In	Other	Total ADP
Livingston	25.5	18.4	49.8	61.0	0.3	0.1	155.1
Luce	no jail						
Mackinac	3.9	2.5	6.9	5.2	2.0	0.0	20.5
Macomb	308.3	87.4	325.4	265.4	0.0	1.1	987.6
Manistee	11.7	2.8	12.4	15.2	2.0	0.3	44.4
Marquette	11.2	6.1	22.1	22.8	6.8	1.1	70.1
Mason	5.7	2.4	18.8	6.7	1.2	0.8	35.6
Mecosta	7.3	9.2	18.1	12.7	0.0	0.0	47.3
Menominee	1.0	1.3	16.3	15.3	0.0	0.2	34.1
Midland	12.6	7.6	49.8	28.9	0.0	0.0	98.9
Missaukee	3.1	1.3	12.2	5.2	1.1	0.7	23.6
Monroe	not reported						
Montcalm	11.0	13.1	45.2	29.0	0.3	1.8	100.4
Montmorency	1.1	1.2	2.5	5.1	23.1	0.0	33.0
Muskegon	199.6	71.3	46.9	11.5	0.2	1.5	331.0
Newaygo	13.8	12.4	19.0	24.4	64.9	13.7	148.2
Oakland	1,309.5	395.6	0.0	0.0	0.0	9.1	1,714.2
Oceana	not reported						
Ogemaw	5.1	3.9	9.1	12.9	1.4	1.4	33.8
Ontonagon	2.4	2.6	2.8	2.1	0.0	0.0	9.9
Osceola	5.4	6.4	6.1	12.2	0.0	0.0	30.1
Oscoda	no jail						
Otsego	2.7	1.7	9.8	14.4	0.6	0.5	29.7
Ottawa	70.0	31.6	66.8	59.2	0.0	6.4	234.0
Presque Isle	3.4	3.5	3.3	7.5	6.7	0.0	24.4
Roscommon	2.8	2.2	20.4	7.4	15.8	0.1	48.7
Saginaw	224.8	96.6	179.5	92.0	16.0	21.9	630.8
St.Clair	56.1	14.6	29.0	16.7	9.2	0.5	126.1
St.Joseph	24.2	16.1	58.6	35.6	8.4	0.3	143.2
Sanilac	3.4	24.8	9.4	31.2	33.1	0.3	102.2
Schoolcraft	1.2	1.8	6.8	4.0	5.7	0.0	19.5
Shiawassee	not reported						
Tuscola	5.7	7.2	23.6	16.8	0.4	1.3	55.0
Van Buren*	21.9	9.6	31.8	27.0	1.9	3.4	95.6
Washtenaw*	83.4	33.5	81.7	68.1	7.7	7.1	281.5
Wayne	1,350.4	128.8	903.6	313.9	0.0	57.0	2,753.7
Wexford	not reported						
Michigan*	4,307.9	1,518.1	3,004.5	2,330.4	815.1	317.7	12,293.7

* Partial Year Data

**Data compiled from counties reporting electronically, excluding offenders boarded out.

Source: Jail Population Information System (JPIS)

The JPIS data also provide baseline data for jail lengths of stay, which is important because actual time in jail is typically shorter than that provided in the original order of sentence. The statewide average length of stay for felons is 74 days; the average presentence length of stay for felons is 29 days, and the average postsentence length of stay is 45 days.⁵ Lengths of stay in jail also can be expected to vary according to offense.

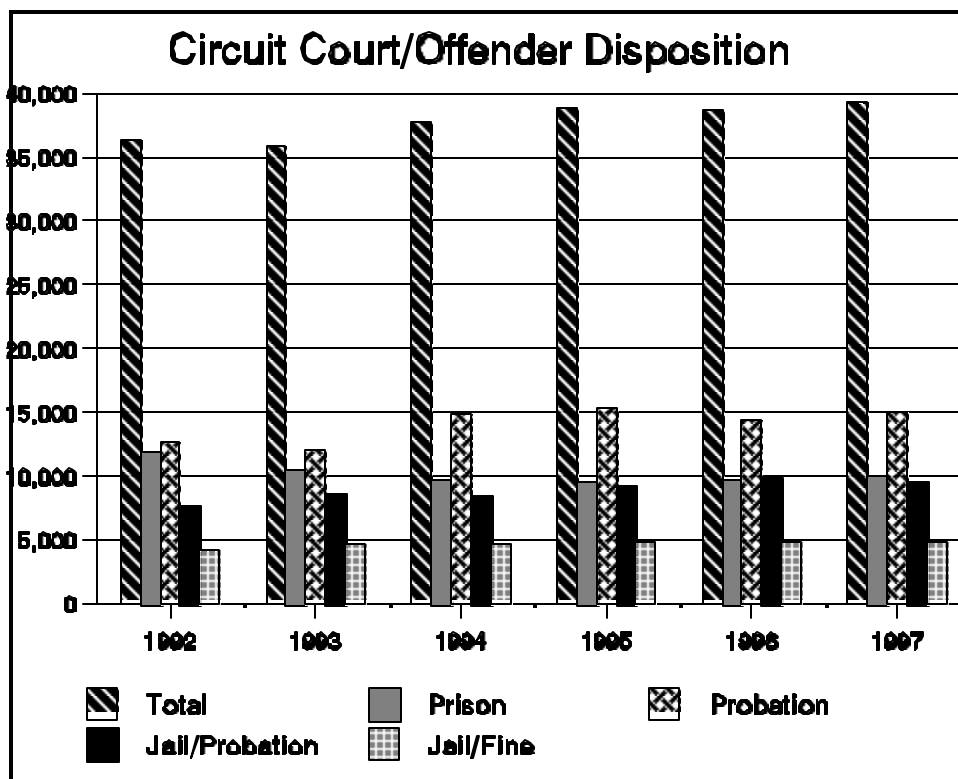
FELONY DISPOSITIONS

A felony disposition is the sentence given for a felony conviction and includes the use of prison, probation, jail, or other sentence such as delayed or suspended sentences or Holmes Youthful Trainee Act probation. Felony dispositions are captured in a database called the Basic Information Reports (BIR) and are available by circuit court and offender or by crime and total number of convictions.⁶ Looking at the information by circuit court and offender, [Figure 8](#) shows that the number of felony dispositions have increased from 36,315 in 1992 to 39,342 in 1997. As seen in [Figure 8](#), from 1992 to 1997, the use of prison has decreased, while the use probation and jail with probation has increased.

⁵More serious offenders tend to have shorter postsentence lengths of stay, probably because of a variety of factors: Some have longer presentence lengths of stay and thus more credit for time served; some are released to programs; and some are released to other jurisdictions such as the Department of Corrections or the Federal Bureau of Prisons.

⁶The data are compiled in the Department of Corrections Annual Statistical Report which is a publically disseminated document providing information about prison population, dispositions, and parole and probation. The Department has expressed serious reservations concerning the ability to make comparisons with earlier Annual Statistical Reports because of differences in the compilation of offense groups, as well as the unknown accuracy of the data. However, to provide trend analysis it is necessary to utilize these publically available data. Providing information in a brief time frame may produce other distortions of these trends. The compilation difficulties are expressed in the text of this paper.

Figure 8



Turning now to the other display of BIR data, [Table 3](#) shows the number of convictions by crime type for 1992 and 1997 and the felony dispositions as a percentage of convictions. From the data in the [Table 3](#) it can be seen that the number of convictions for nonassaultive and drug offenses has decreased whereas the number of convictions for assaultive crimes has increased. The use of prison and other dispositions has decreased among the three crime types and the use of probation and jail has increased.

Table 3

	<u>Total</u>	<u>Prison</u>	<u>Probation</u>	<u>Jail</u>	<u>Other</u>
1992					
Nonassaultive	23,446	27.4%	49.0%	13.2%	10.3%
Drug	9,393	33.9%	55.4%	6.8%	3.9%
Assaultive	8,955	60.7%	30.5%	4.3%	4.4%
1997					
Nonassaultive	23,075	24.2%	53.8%	14.1%	7.9%
Drug	9,195	25.1%	59.8%	11.8%	3.3%
Assaultive	11,079	49.3%	39.0%	8.4%	3.3%
Difference					
Nonassaultive	(371)	-3.2%	4.7%	0.8%	-2.4%
Drug	(198)	-8.8%	4.5%	4.9%	-0.6%
Assaultive	2,124	-11.5%	8.5%	4.0%	-1.0%
Source: Department of Corrections Statistical Report					

Table 4

Disposition of Top Ten Offenses by Crime Type

MCL Section	Top Offenses*	Total		Prison		Probation		Jail		Other	
		1992	1997	1992	1997	1992	1997	1992	1997	1992	1997
Nonassaultive											
750.356(c) Retail Fraud		2,707	2,773	27.3%	20.8%	36.3%	43.0%	26.2%	27.2%	10.2%	9.1%
750.227 Carrying a Concealed Weapon		2,506	1,808	9.9%	16.4%	64.1%	63.4%	9.7%	13.6%	9.1%	6.6%
750.535 Receiving Stolen Property		1,985	1,935	30.8%	23.3%	49.8%	56.8%	9.4%	12.2%	10.0%	7.7%
257.6256(d) OUIL III		1,557	2,068	30.5%	30.6%	49.1%	59.0%	16.4%	8.9%	3.9%	1.5%
750.110(a) Breaking & Entering		1,921	1,551	41.0%	37.4%	45.3%	47.9%	6.1%	8.9%	7.7%	5.8%
750.360 Larceny in a Building		1,013	1,335	23.2%	17.4%	53.5%	58.8%	15.1%	13.9%	8.2%	9.9%
750.249 Uttering & Publishing		823	1,238	35.4%	32.0%	46.1%	49.7%	8.1%	11.6%	10.4%	6.7%
750.356(a) Larceny from a Motor Vehicle		1,044	1,118	23.5%	17.3%	46.0%	52.1%	8.7%	13.8%	21.8%	16.9%
750.174 Embezzlement by an Agent		655	1,065	10.2%	8.8%	51.5%	71.1%	6.4%	4.3%	31.9%	15.8%
750.377(a) Mal. Destruction of Prop. > \$100		708	733	16.4%	12.4%	54.2%	60.2%	12.3%	14.7%	17.1%	12.7%
Total		14,919	15,624	24.8%	21.6%	49.6%	56.2%	11.8%	12.9%	13.0%	9.3%
Drug											
333.7403(2)(a)(5) Possession of Less 25 Grams		3,375	3,639	20.9%	15.5%	67.5%	66.3%	7.9%	15.8%	3.8%	2.4%
333.7401(2)(a)(4) Mfg, Del, Poss Less than 50 Grms		3,057	2,105	55.9%	50.7%	38.9%	44.5%	2.5%	3.1%	2.7%	1.6%
333.7401(2)(d)(III) Del/Mfg Marijauna**			1,621		9.6%		74.0%		8.9%		7.5%
333.7401(2)(c) Mfg, Del, Poss, Sch 4, Marijuana		368	308	14.1%	20.1%	73.4%	48.1%	8.4%	26.9%	4.1%	4.9%
333.7413(2) Second Offense		206	215	52.4%	36.3%	26.7%	38.1%	15.0%	23.7%	5.8%	1.9%
333.7407(1)(c) Obtain by Fraud		55	118	9.1%	10.2%	60.0%	72.0%	9.1%	13.6%	21.8%	4.2%
333.7405(d) Maintain a Drug House		38	170	5.3%	14.1%	89.5%	71.2%	5.3%	11.8%	0.0%	2.9%
333.7401(2)(a)(3) Mfg, Del, Poss 50-224 Grams		173	143	87.3%	76.2%	10.4%	20.3%	0.0%	2.1%	2.3%	1.4%
333.7403(2)(b) Possession/Analogues		47	137	8.5%	5.8%	76.6%	74.5%	12.8%	17.5%	2.1%	2.2%
333.7341 Mfg an Imitation of a Cont Sub		135	128	23.7%	19.5%	50.4%	40.6%	20.7%	35.2%	5.2%	4.7%
Total		7,454	8,584	30.8%	25.8%	54.8%	54.9%	9.1%	15.9%	5.3%	3.4%
Assaultive											
750.82 Felonious Assault		1,608	1,637	34.6%	26.8%	50.1%	56.9%	8.5%	12.0%	6.8%	4.2%

Top Ten Offenses by Crime Type											
MCL Section	Top Offenses*	Total		Prison		Probation		Jail		Other	
		1992	1997	1992	1997	1992	1997	1992	1997	1992	1997
750.110(a)(3) Home Invasion - 2nd Degree**			1,139		36.0%		49.4%		6.8%		7.8%
750.479(b) Interfere with a Peace Officer**			691		20.7%		48.2%		28.1%		3.0%
750.529 Armed Robbery		911	700	96.9%	96.0%	2.4%	2.1%	0.2%	1.6%	0.4%	0.3%
750.520(c) 2 nd Degree Crim. Sexual Conduct		717	627	59.7%	56.5%	35.0%	39.9%	1.5%	2.2%	3.8%	1.4%
750.520(e) 4 th Degree Crim. Sexual Conduct		410	537	14.4%	14.9%	68.5%	67.4%	11.2%	14.0%	5.9%	3.7%
750.84 Assault with Intent Less Murder		546	510	71.4%	69.2%	24.2%	26.1%	2.0%	3.1%	2.4%	1.6%
750.520(d) 3 rd Degree Crim. Sexual Conduct		357	419	81.5%	76.8%	7.8%	15.5%	4.2%	3.1%	6.4%	4.5%
750.110(a)(2) 1 st Degree Home Invasion**			419		56.6%		34.1%		5.3%		4.1%
750.530 Unarmed Robbery		471	410	65.6%	55.4%	29.1%	35.4%	3.6%	6.3%	1.7%	2.9%
Total		5,020	7,089	60.6%	50.9%	31.0%	37.5%	4.5%	8.2%	3.9%	3.4%
*The description is for caption purposes only. For full crime detail refer to the section amended. ** Crime did not exist as a separate crime in 1992.											
Source: Department of Corrections Statistical Report											

More information about the number of convictions and the felony disposition of the convictions is provided by an examination of specific crimes within each crime type. For 1997, the 10 most frequent felony convictions for each crime type were selected and the felony dispositions were contrasted with the dispositions in 1992. As seen in [Table 4](#), the increase in assaultive crime may result, in part, from crimes that have been enacted or amended between 1992 and 1997. One example is home invasion, which in 1992 was not established as a crime separate from breaking and entering. Breaking and entering is categorized as a nonassaultive crime, while home invasion is considered an assaultive offense. The elements of the offenses are similar, except that home invasion requires either that the offender have a weapon or that someone be in the dwelling at the time of the offense. If offenders who would have been convicted of breaking and entering are now instead convicted of home invasion, the number of violent crimes increases without an accompanying change in offender behavior.

Thus, the decrease in the use of prison for assaultive offenses may be related to the shift in crime type. The use of prison for two of the three offenses enacted as separate crimes since 1992 is well below the average use of prison for other assaultive offenses. The cause of reduced use of prison is not apparent from this analysis, but the important point is that the compensation offered through State grants or reimbursements may have an effect on felony convictions and felony dispositions just as changes in statute, community attitudes, or prosecutorial or judicial patterns may have an effect.

STATUTORY CHANGES

Many statutory changes are taking effect in 1999, including sentencing guidelines and truth-in-sentencing, and the revision of drunk driving and felony threshold statutes. The fiscal and population impact of these changes is unclear, even as cases subject to the statutory changes are being adjudicated. The lack of clarity is based on the lack of widely available data about the cases. The correctional database containing dispositions by county (BIR data) is unavailable due to technical changes that have to be made to tracking systems. This section of the report describes the statutes that are taking effect in 1999, and discusses the potential fiscal and prison population impact of these measures.

Sentencing Guidelines And Truth-in-Sentencing

Michigan operates under an indeterminate sentencing system, meaning that each sentence carries a minimum and a maximum term, with the exact date of release at the discretion of the parole board. The maximum sentence is specified in the penal statute, while judicial determination of the minimum term is subject to sentencing guidelines, which establish a recommended range for an offender's minimum sentence. Sentencing guidelines issued by the Supreme Court have been in use in one form or another since 1984. However, starting with offenses committed on or after January 1, 1999, sentencing guidelines enacted by the Legislature apply. Both the Supreme Court guidelines and the legislative guidelines have the same general structure: a DOC field agent scores various offense and prior record variables for each of the crimes of which the offender is convicted. The scores

are plotted on a grid that has prior record scores along one axis and offense scores along the other axis. The grid cell where the two scores meet contains the recommended range for the offender's minimum sentence. (See Appendix B for a sample grid.)

Legislative sentencing guidelines differ from the Supreme Court's guidelines in several important respects. Perhaps most significantly, the legislative guidelines cover virtually all felonies, including drunk driving and habitual offender enhancements. Crimes are divided into nine crime classifications, ranging from "A", the most serious, to "H", the least serious, with a separate classification of "M2" for second-degree murder. Each crime classification has its own sentencing grid and recommended sentence range on the grid is described in a grid "cell".

There are three types of cells under the guidelines: lockout, straddle, and prison. Lockout cells are those in which the upper limit is 18 months or less; offenders whose guidelines scores place them in these grid cells are supposed to receive local sanctions (this is sometimes called the "18-month lockout"). Straddle cells are those that have ranges of more than 18 months at the upper end, and 12 months or less at the lower end; straddle cell offenders may be sentenced either to prison or to local sanctions. Offenders other than lockout offenders and straddle cell offenders have guidelines scores that recommend a prison sentence.

As noted earlier in this report, the DOC has projected that, based on a continuation of current trends, the prison population will increase. Moreover, the combined impact of sentencing guidelines and truth-in-sentencing has been projected further to increase the prison population. Projections made at the time of the guidelines' development suggest that fewer offenders will go to prison, but for longer terms. Minimum terms are expected to increase under sentencing guidelines, and truth-in-sentencing requires offenders to serve their entire minimum terms in secure confinement.

Truth-in-sentencing applies to certain serious offenses committed on or after December 15, 1998, and to all other felonies commencing December 15, 2000. The initial prison population impact of truth-in-sentencing will be felt over the next couple of years, as offenders who might otherwise have become eligible for community placement must instead be kept in prison or correctional camp beds. The long-term impact will be far greater as offenders who otherwise might have been paroled are instead kept in prison through the duration of their minimum sentences.

Preliminary data compiled by Charles W. Ostrom, Ph.D., under contract with the Department of Corrections, support predictions that proportionately more offenders will be kept locally under the new guidelines. Dr. Ostrom's report points out, however, that the more serious cases, particularly second-degree murder and class A crimes, may not be adequately represented in the cases thus far available for examination--perhaps because such cases take longer to process.

Table 5

Judicial Departures from Sentencing Guidelines					
Crime Class	<i>Departures Below</i>		No Departure	<i>Departures Above</i>	
	Presumed Prison/ No Prison Given	Shorter Prison Sentence		Longer Jail Sentence	Longer Prison Sentence
M2	0.0%	20.0%	80.0%	0.0%	0.0%
A	5.2%	27.6%	62.1%	0.0%	5.2%
B	18.9%	13.5%	64.9%	0.0%	2.7%
C	7.9%	6.0%	82.4%	0.0%	3.7%
D	1.6%	1.6%	84.7%	2.8%	9.3%
E	0.5%	0.8%	90.5%	4.3%	3.9%
F	0.3%	0.3%	94.7%	1.3%	3.6%
G	0.0%	0.0%	92.1%	0.2%	5.9%
H	0.9%	0.3%	91.5%	2.2%	5.2%
Total:	1.2%	1.4%	89.7%	2.5%	5.2%

Source: Ostrom, Ph.D., Charles W., "Analysis of 1999 Sentencing Guideline Data with Emphasis on Potential County Jail Reimbursement Criteria", September 15, 1999.

In an analysis of over 3,700 cases for which data were available,⁷ Dr. Ostrom found that 89.7% of the sentences accorded with legislative sentencing guidelines' recommendations, while 2.6% of the sentences fell below the recommendations, and 7.7% of the sentences were above the recommendations, as seen in [Table 5](#).⁸ [Table 6](#) shows that of the cases processed, 68.8% were in lockout cells, 24.9% fell into straddle cells, and 6.3% fell into prison-only cells.⁹ Straddle-cell felons have been of particular interest in discussions on jail reimbursement criteria, in that offenders suitable for prison diversion programs likely would be found in this group of felons.

⁷Dr. Ostrom used data available from the State Court Administrative Office in developing his report.

⁸A sentence outside of the guideline recommendation requires judicial departure based on a substantial and compelling reason stated on the record and not already considered in the offense or offender variables.

⁹The proportion of cases falling in straddle cells was notably higher than projected under a study that Dr. Ostrom conducted for the Michigan Sentencing Commission, which developed the guidelines that formed the basis for what the Legislature enacted.

Table 6

Distribution of Sentences		
Cell Type	Sentencing Commission Projection	Actual Cases Through September 1999
Lockout	72.9%	68.8%
Straddle	13.3%	24.9%
Prison	13.8%	6.3%
Source: Ostrom, Ph.D., Charles W., "Analysis of 1999 Sentencing Guideline Data with Emphasis on Potential County Jail Reimbursement Criteria", September 15, 1999.		

Complicating an assessment of sentencing guidelines' impact on State and local government is the scarcity of data on probation violators. As noted above, probation violators are a rising component of prison intake, and Dr. Ostrom's report states that about 14% of the total dispositions are felony probation violations. However, there have been no comprehensive data developed on the number of probation violators who fall into straddle cells or who overlap with other guidelines-based selection criteria. (A copy of Dr. Ostrom's September 15, 1999 report is included in Appendix C.)

Felony Drunk Driving

A 20-bill package changing the definition of and penalty for crimes involving drunk driving and adding new drunk driving offenses was enacted in 1998 and took effect on October 1, 1999. Table 7 summarizes the bills in the package and all of the changes that were enacted. Of the changes that were enacted, two have a potential effect on the disposition of felony cases and State and local costs; changes to the definition of prior convictions for felony drunk driving (OUIL III) and the requirement for offenders with one or more prior convictions of drunk driving (OUIL), driving impaired (OWI), OUIL/OWI causing death or serious impairment, or operation by a minor, to participate in and successfully complete one or more rehabilitation programs. These two changes are discussed in more detail below.

According to the 1998 Michigan Annual Drunk Driving Audit, there were 30,214 convictions for OUIL and 31,597 convictions for OWI. The data do not indicate how many of these crimes were committed by offenders with prior convictions, or even if an individual offender was convicted more than once during the time period of the audit. Until 1999, only OUIL and OUIL resulting in death or serious impairment were considered as a prior conviction for purposes of an OUIL III sentence. Now OWI also will be considered as a prior for an OUIL III sentence; given that OWI convictions are more than double the number of OUIL convictions, one may assume that the pool of offenders who may be sentenced for an OUIL III could double as a result of the statutory change. One may assume that if the pool of potential offenders doubles, the number of OUIL III sentences

could double as well. However, the actual size of the pool of potential offenders is unknown, because there are no data available to identify how many of those convicted of OUIL and OWI each year are repeat offenders. Also, prosecutorial policy will strongly affect the number of offenders charged with felony drunk driving based on the revised criteria.

In addition to affecting OUIL III sentences, prior convictions will have an impact on substance abuse assessment and treatment for those convicted of drunk driving offenses. Until October 1999, a judge could have attached a special condition of substance abuse treatment to a sentence and the offender would have been assessed through a service provider contracted by the Department of Corrections. If the results of the assessment indicated that an offender would benefit from treatment, the offender was provided with a list of treatment providers also under DOC contract. As part of that special condition, the judge could have required the offender to reimburse the DOC for the contracted services. In certain circumstances, such as when an offender has private insurance, the offender may have been required to pay for services directly, although some insurance policies do not pay for court-ordered treatment. Under changes that took effect on October 1, 1999, if an offender has one or more prior convictions it is mandatory that the court order the person to participate in and complete a rehabilitation program.

According to the 1998 Michigan Annual Drunk Driving Audit, there were 58,694 offenders convicted of violating one of the sections covered in the legislation. Of those convicted, 25,518 were sentenced to substance abuse treatment. However, the data do not indicate the number of offenders who had a second or subsequent conviction and would, therefore, be required to seek assessment under this legislation. Further, the new requirement for offenders to be assessed for substance abuse treatment could have an unpredictable effect on prosecutorial charging and plea bargaining practices and their accompanying impact on offender dispositions.

Table 7

Impaired Driving Statute Amendments						
<u>MCL Section</u>	<u>Description*</u>	<u>Crime</u>	<u>Penalty</u>	<u>Prison/Jail</u>	<u>Fine</u>	<u>Other</u>
233(2)	Purchase or lease of an impounded vehicle	New	New	1 year	\$1,000	Fine and time
233(3)	Sale to avoid forfeiture	New	New	1 year	\$1,000	Fine and time
233(4)	Transfer title of impounded vehicle	New	New	1 year	\$1,000	Fine and time
233(6)	New registration application not accompanied by old registration	Existing	New	93 days	\$100	Fine and time
625m(3)	Operating commercial vehicle under the influence	Existing	Increased	93 days	\$300	Fine and time
625m(4)	Above with 1 prior within 7 years	Look back reduced from 10 yrs	Existing	1 year	\$1,000	Fine and time
625m(5)	Above with 2 priors within 10 years	New	New	1-5 years	\$500-\$5,000	Probation, jail , and community service may substitute for prison
625(4)	OUIL death resulting	Existing	Existing	15 years	\$2,500-\$10,000	Fine and time
625(5)	OUIL serious impairment resulting	Existing	Existing	5 years	\$1,000-\$5,000	Fine and time
625(7)	OUIL with minor passenger	New	New	1 year	\$1,000	Fine and time; may be charge with other crimes from same incident
625(8)(a)	OUIL	Existing	Jail increase	93 days	\$100-\$500	45 days community service
625(8)(b)	OUIL II	Existing	Jail and community service increase	5 days - 1 year	\$200-\$1,000	and/or 30-90 days community service
625(8)(c)‡	OUIL III	Existing	Community service increase	1-5 years	\$500-\$5,000	Prison or jail with probation and community service
625(2)/(9)(a)†	Allowing vehicle use/driver intoxicated	Existing	Jail increase	93 days	\$100-\$500	Fine and time
625(9)(b)	Allowing vehicle use/driver intoxicated death resulting	New	New	5 years	\$1,500-\$10,000	Fine and time
625(9)(c)	Allowing vehicle use/driver intoxicated	New	New	2 years	\$1,000-\$5,000	Fine and time

Impaired Driving Statute Amendments						
<u>MCL Section</u>	<u>Description*</u>	<u>Crime</u>	<u>Penalty</u>	<u>Prison/Jail</u>	<u>Fine</u>	<u>Other</u>
625(3)/(10)(a)†	OWI	Existing	Jail increase	93 days	\$300	45 days community service
625(10)(b)	OWI II	Existing	Jail and community service increase	5 days-1 year	\$200-\$1,000	30-90 days community service instead of jail time
625(10)(c)	OWI III	Existing	Jail, community service, fine increase	1-5 years	\$500-\$5,000	Probation, jail, and community service may substitute for prison
625(6)/(11)(a)†	Minor with any bodily alcohol content	Existing	Existing		\$250	45 days community service
625(11)(b)	As above with 1 prior within 7 years	Existing	Jail new	93 days	\$500	60 days community service instead of jail time
81134(7)	Operate an ORV impaired death resulting	New	New	15 years	\$2,500-\$10,000	Fine and time
81134(8)	Operating an ORV impaired serious impairment resulting	New	New	5 years	\$1,000-\$5,000	Fine and time
703(2)	Furnishing fraudulent identification to a minor	Existing	New	93 days	\$100	Fine and time
625k(7)	Knowingly provide false information about an interlocking devise	New	New	5-10 years	\$5,000-\$10,000	Fine and time
625k(8)	Negligently provide false information about an interlocking devise	New	New	1 year	\$1,000	Fine and time
625k(9)	Knowingly fail to notify devise no longer meets conditions	New	New	5-10 years	\$5,000-\$10,000	Fine and time
625k(10)	Negligently fail to notify devise no longer meets conditions	New	New	1 year	\$1,000	Fine and time
625b(5)	Prior conviction under section 625 (1),(3),(4),(5),(6),(7)	Added prior conviction	New			At least 1 appropriate rehabilitative program
624a(1)	Open container	Actor defined	Existing			Community service or substance abuse testing

Impaired Driving Statute Amendments						
<u>MCL Section</u>	<u>Description*</u>	<u>Crime</u>	<u>Penalty</u>	<u>Prison/Jail</u>	<u>Fine</u>	<u>Other</u>
624b(1)	Minor open container	Actor defined	Existing			Community service or substance abuse testing
625n(10)	Dispose of vehicle to avoid forfeiture	Existing	Penalty type decrease	1 year	\$1,000	Fine and time
904e(4)	Bypass immobilization device	New	New	93 days	\$100	Fine and time
904(4)	Operate vehicle with suspended license death resulting	New	New	15 years	\$2,500-\$10,000	Fine and time
904(5)	Operator vehicle with suspended license serious impairment resulting	New	New	5 years	\$1,000-\$5,000	Fine and time
904(7)	Allowing vehicle use/license suspended serious impairment resulting	New	New	2 years	\$1,000-\$5,000	Fine and time
904(7)	Allowing vehicle use/license suspended death resulting	New	New	5 years	\$1,000-\$5,000	Fine and time
321a(1)	Failure to answer citation or pay court judgements	Adds court judgments	Penalty specified	93 days	\$100	Fine and time
<p>* The description is for caption purposes only. For full crime detail refer to the section amended.</p> <p>† Subsection of crime/Penalty subsection</p> <p>‡ Offenses that can be considered prior convictions. Now include violation of subsection 1, 3,4,5,6,7 or 625(m) or homicide, manslaughter, or murder from operation of motor vehicle or attempts of these crimes.</p>						

Felony Threshold

For certain crimes, such as larceny, malicious destruction of property, retail fraud, and receiving stolen property, the difference between a misdemeanor and a felony is the value of the property involved. Historically, a crime involving a dollar value of \$100 or less was a misdemeanor while over \$100 was a felony. As of January 1999, the dollar value, or felony threshold, increased to \$1,000. As a result of these changes, offenders who might have been prosecuted in circuit court may now be subject to district court jurisdiction and that court's remedies, including jail but not prison. Also, for offenders subject to the felony the prior record of the offender will be included to determine the maximum prison term and fine level for these crimes.

To the extent that the felony threshold increase may decrease the number of felony offenders or vary the length of prison sentences for offenders convicted of these offenses, the State may realize cost savings. Local government, however, assumes responsibility for costs for offenders who are sentenced locally. Fines for these offenses also were increased, providing judges with another nonprison sentencing option that may reduce prison commitments or increase fine revenues.

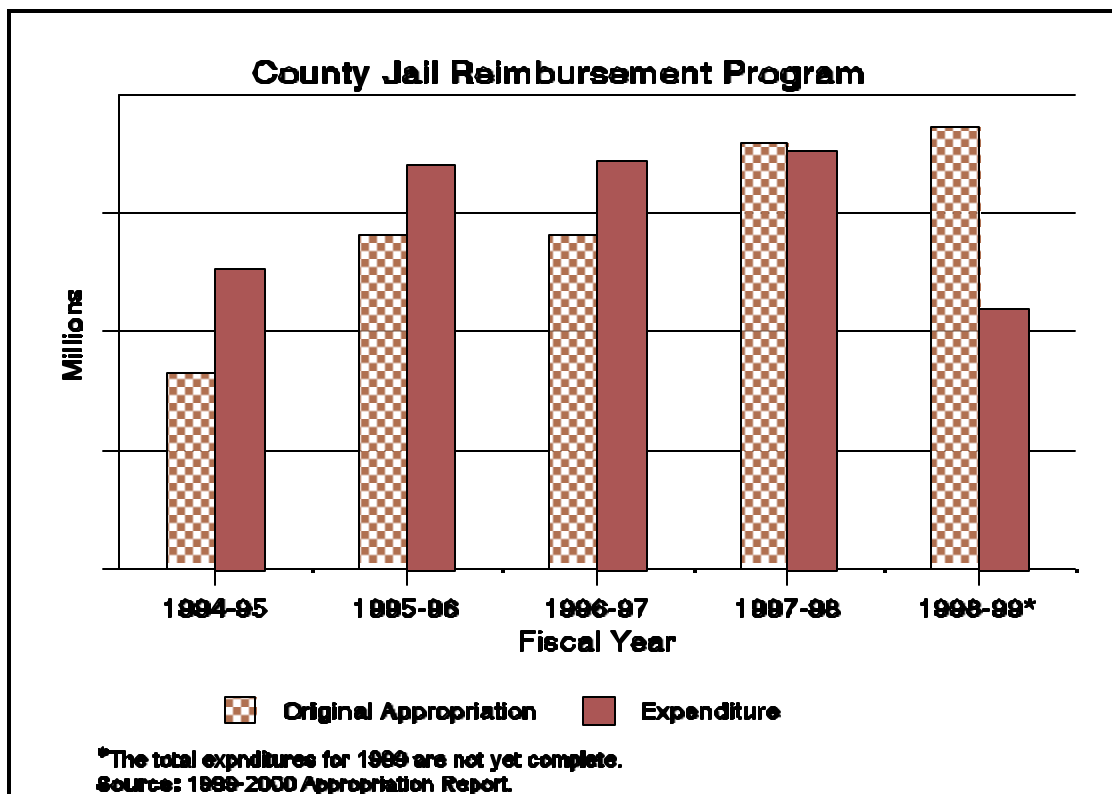
UTILIZATION OF THE COUNTY JAIL REIMBURSEMENT PROGRAM (CJRP)

The criteria for the CJRP have been established in the annual appropriations acts for the Department of Corrections. In FY 1996-97 and FY 1997-98, the criteria included reimbursements for offenders who were convicted of felony drunk driving, for some habitual offenders, and for offenders whose crime was subject to Supreme Court sentencing guidelines and whose minimum sentencing guidelines score was 12 months or more.¹⁰ With all of the statutory changes and the replacement of Supreme Court guidelines with legislatively enacted guidelines, the criteria have been in flux and there are no conclusive data available to determine the impact of the changes. Thus, described below are the appropriations and expenditures for the county jail reimbursement program, along with information about reimbursement from the program.

Figure 8 shows the reimbursement program's appropriations and expenditures since FY 1994-95. The appropriation was \$8.3 million, but actual expenditures exceeded the original appropriation. Legislative transfers to the program in FY 1994-95, FY 1995-96, and FY 1996-97 provided the additional funding needed to meet the actual reimbursements. In FY 1997-98, expenditures were less than the original appropriation, because the original appropriation was higher. The program has grown to an appropriated level of \$18.6 million in 1999; however, the full-year expenditures for FY 1998-99 are not yet available. (For partial-year FY 1998-99 information, see Appendix D.)

¹⁰Although reimbursement was made for the same types of offenders in FY 1996-97 and FY 1997-98, the specific criteria changed with the exclusion of first-time habitual offenders. This change to the criteria affected payouts to certain counties.

Figure 9



CONCLUSION

The full effects of the various sentencing changes of the past year have yet to be realized. New trends engendered by legislative sentencing guidelines likely will take two or three years to stabilize, while judges, prosecutors, and defense attorneys gain experience with the new guidelines.¹¹ Effects of changes in felony threshold and drunk driving statutes are similarly indiscernible at this time. Further, the lack of data on probation violators and the ongoing problems with the BIR correctional database continues to present serious concerns. Thorough compilation of criminal disposition data at both the State and local levels will be indispensable to meaningful analysis of ongoing trends for with an understanding of the impacts of the many changes, the State and local units of government can plan adequately for future allocation of resources.

¹¹ At the time of writing, legislation is before the Senate which, if enacted, could change the scoring structure of the guidelines.